

Application No.: 10/004,495

12

Docket No.: 509982001600

REMARKS

In the Office Action mailed on March 10, 2004, the Examiner rejected claims 1-51 under 35 U.S.C. 103(a) as being unpatentable over the acknowledged prior art of the instant specification. Claims 1, 18 and 35 have been amended. Applicants request reconsideration of pending claims 1-51 in view of the following remarks.

I. Claims 1, 18 and 35

Independent claims 1, 18 and 35 have been amended to recite, in part, "simulating/simulate a reflectance response of said light incident only at said first point and said second point." Independent claims 1, 18 and 35 have also been amended to recite, in part, "determining/determine an approximated integrated reflectance response of said aperture based on said reflectance response only at said first point and said second point."

In the Office Action, the Examiner asserted that:

"It would have been obvious to use as many points as needed for the desired accuracy while reducing the computational load and thus the time it takes to do the calculations; this is a simple engineering tradeoff of time versus accuracy. When only two points are good enough for the application at hand even though one is not accurate enough, it would have been obvious to use only two because the calculation load would be minimum for the acceptable results."

Applicants assert that the Examiner has failed to establish any teachings that provide a sufficient basis for a reasonable expectation of success for using only two points to determine an approximate integrated reflectance response. In particular, the background of the present specification discloses using a single point or multiple points methods. As depicted in FIG. 2a, the multiple points method uses many more points than only two points. The background discloses that the multiple points method takes a long time, and that the single point method can be obtained very quickly but it is not very accurate. The background, however, does not disclose that the number of points used in the multiple points method is varied for different applications to achieve different

SF-1667070

Application No.: 10/004,495

13

Docket No.: 509982001600

accuracies or that the single point method is not accurate enough. Fig. 4 depicts the variation between the results obtained using the multiple points method and the single point method. Applicants assert that the disclosure of the background would not have provided one skilled in the art with a reasonable expectation of success that using only two points rather than one point would have sufficiently increased accuracy to warrant the additional complexity of simulating an additional reflectance response and determining an approximated integrated reflectance response.

Thus, Applicants assert that independent claims 1, 18 and 35 are allowable.

II. Claims 2-17, 19-34 and 36-51

The Examiner rejected claims 2-17, 19-34 and 36-51 without articulating specific grounds for rejecting these claims. Instead, in the Office Action, the Examiner merely stated:

"Those in the art could use appropriate simulation algorithms and mathematical models to model the responses for various desired objects, including two-dimensional gratings. It is known and would have been obvious to use appropriate means to obtain the necessary numbers for the model and to do the calculations, and appropriate software to control the control and calculations means."

Applicants assert that the Examiner's assertions are too broad a generalization of what is well known in the art without establishing any documentary evidence. M.P.E.P. 2144.03(E) states, "[i]t is never appropriate to rely solely on common knowledge in the art without evidentiary support in the record as the principal evidence upon which a rejection was based."

Thus, if the rejection of the independent claims is maintained, Applicants request further clarification from the Examiner with regard to the grounds for rejecting all of the dependent claims consistent with the requirements for establishing a *prima facie* case of obviousness.

However, if the independent claims are allowed, Applicants assert that claims 2-17, 29-34 and 36-51 are allowable for at least the reason that they depend from allowable independent claims.

sf-1667070

Application No.: 10/004,495

14

Docket No.: 509982001600

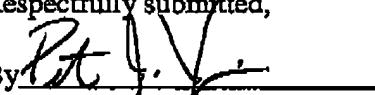
III. Conclusion

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 509982001600. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated: June 10, 2004

Respectfully submitted,

By 
Peter J. Yim

Registration No.: 44,417
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, California 94105
(415) 268-6373

sf-1667070